

EXECUTIVE SUMMARY

In this testimony, the NAM expresses its general support for enactment of H.R. 2432, the Paperwork and Regulatory Improvements Act of 2003. The NAM believes that this legislation, if enacted, will help lead to greater voluntary compliance with federal regulations by making needed reforms. Specifically, the NAM:

- has concerns about dedicating OIRA staff to the review of IRS regulations, but encourages authorizing additional staff for the agency;
- supports repeal of the exemptions from various paperwork review and regulatory due process requirements contained in the Farm Security and Rural Investment Act of 2002 (P.L. 107-171);
- supports having the General Accounting Office review major regulations for Congress;
- supports the bill's improvements to regulatory accounting; and
- supports the proposed regulatory budgeting pilot project.

**JOHN SAMPLE
PEAKE PRINTERS, INC.
ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
U. S. HOUSE OF REPRESENTATIVES**

JULY 22, 2003

Mr. Chairman, members of the U.S. House of Representatives Committee on Government Reform, thank you for the opportunity to testify on behalf of the National Association of Manufacturers (NAM) in favor of H.R. 2432, the Paperwork and Regulatory Improvements Act of 2003. My name is John Sample, and I serve as director, Sales and Marketing, for NAM member company Peake Printers, Inc. First, let me give you a little background on the NAM, and then on my own company.

The NAM is the nation's largest industrial trade association. The NAM represents 14,000 members (including 10,000 small and medium companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

Peake Printers is a commercial printing company located in Cheverly, Maryland. Our 100 employees print, bind and distribute brochures, magazines, annual reports and other print collateral for corporate clients, trade associations, educational institutions and the U.S. government.

The printing industry has been hit hard by the sluggish economy of late. At Peake, our reality is that we need to produce more work with less people than ever before just to keep the status quo. Everyone within our company must wear multiple hats – a perfect example of that is that a guy with the title of director of Sales and Marketing is sitting before you talking about paperwork and regulatory improvement – not a traditional “sales” role. We clearly understand and value of the important role of regulation and the reporting that is associated with it. That being said, we would surely see a tangible benefit from any reduction or simplification to the paperwork that we complete monthly, semi-annually and annually.

The NAM supports passage and enactment of most of H.R. 2432, and urges the Committee on Government Reform to make a favorable recommendation to the full House of Representatives, after amending Section 3. The Paperwork and Regulatory Improvements Act of 2003 makes minor changes to the current system and the NAM hopes that it will not be controversial as it wends its way through the legislative process.

Although the changes proposed in H.R. 2432 may be minor, even small improvements in regulatory policy can have a large effect. This is because of the huge importance that regulations have, both to businesses and to average American citizens. For example, in October 2001 the U.S. Small Business Administration released “The Impact of Regulatory Costs on Small Firms,” a report by noted economists Mark Crain and Thomas Hopkins. The widely cited study found that the total regulatory burden in 2000 (the last year for which data was available at the time) was \$843 billion, with business shouldering \$497 billion of the total burden. The study also reaffirmed findings of previous reports that the business regulatory burden falls disproportionately on smaller

companies. Specifically, the regulatory costs per employee of businesses with fewer than 20 employees was \$6,975, some 60 percent higher than the cost per worker of \$4,463 for firms with more than 500 employees.

The Crain-Hopkins study cautions that it does not take into account the benefits of regulation, and that development of better methodologies for determining this figure is “an important challenge that would be a logical next step toward achieving a more rational regulatory system.” (From the last paragraph of the introduction.) As noted below, the NAM appreciates that there are benefits from regulations, and hopes that the methodology can be improved so that the estimates of benefits can become more reliable.

The NAM supports H.R. 2432 as an opportunity to improve the regulatory process and the ability to analyze its effects without decreasing the benefits of regulation. The NAM recommends, however, that Section 3 be changed before passage to simply authorize additional staff for OIRA without a statutory mandate as to responsibility.

Section 3: Reduction of Tax Paperwork

Given Finding 1 in H.R. 2432 – that the IRS is responsible for 83 percent of the federal paperwork burden – it is understandable that the committee would like for OIRA to devote more of the agency’s staff time and attention to paperwork generated by the IRS. The NAM has concerns about this provision, however.

Attached to this testimony is a chart that was published in the 2002 OMB report on the costs and benefits of federal regulatory programs that shows year-by-year OIRA staff levels. As you can see, in 1985 OIRA had 75 full-time equivalent positions on its staff. In 2003, that level stands at only 55. In addition, when the Paperwork Reduction

Act created OIRA in 1980, the staffing level was around 90 full-time equivalent positions. With all that this committee and others in Congress want OIRA to do, it can and should provide OIRA with the necessary personnel.

Certainly, before this committee commits by law two full-time staff members to nothing but IRS regulations, at a minimum the committee also needs to provide two additional positions. Even then, however, the NAM questions whether this is the best use of OIRA resources. Rather than micromanage the use of existing staff, the NAM urges the committee to authorize additional staff positions.

Section 4: Repeal of Exemptions for Paperwork Reduction Act, Etc.

Unless a compelling case can be made, the NAM opposes exemptions to the Paperwork Reduction Act and OIRA review of agency regulations – notwithstanding the fact that nearly every agency thinks that its activities should be exempt. This is why the NAM supported subjecting even regulations issued by the Department of Homeland Security to the Administrative Procedures Act. The NAM also supported repealing a provision in the legislation creating the Transportation Security Administration (TSA) that could have allowed “emergency regulations” to continue indefinitely; TSA emergency regulations are now suspended after 90 days unless affirmatively approved by the Transportation Security Oversight Board.

The NAM is not sure why the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) contained any exemptions from various paperwork review and regulatory due process requirements. On the other hand, it is well known (and a bit ironic) that agencies simply hate that they have to comply with the equivalent of

regulatory requirements in order to impose their own regulatory burdens. Unless the Department of Agriculture can make an excellent and persuasive case that the programs exempted under P.L. 107-171 deserve such treatment, the NAM strongly supports removing the exemptions.

Section 5: Amendment of Truth in Regulating Act

The NAM was a fervent supporter of the Truth in Regulating Act (TIRA, P.L. 106-312) prior to its passage in the 106th Congress. The NAM continues to believe that giving the General Accounting Office (GAO) the ability to review major rules upon request will allow Congress to have more and better information in reviewing the implementation of legislation. While OIRA does a good job in this capacity, it should be useful to have a competing and independent evaluation of agency rulemaking, similar to the respective roles of OMB and CBO in budget analysis.

The most important aspect is for the review function to be free from partisan and/or political pressure, and the NAM respects that the Comptroller General and the GAO have demonstrated their ability to meet this goal. Congressional committees, while certainly expert in their respective jurisdictions, too easily fall prey to political agendas; even when a congressional committee finding that a regulation is problematic is objective, however, the criticism that the finding was politically influenced by the majority party is easily made. Thus, having the independent GAO with specified procedures and non-partisan staff analyze regulations will provide Congress with impartial information about the practical utility of a regulation, as well as whether the agency adhered to applicable laws and procedures during the promulgation process.

With the Congressional Review Act in place, GAO can offer members of Congress an independent analysis of whether a regulation should remain in place or if it should be overturned.

Since the TIRA-authorized amount of \$5.2 million was never appropriated, P.L. 106-132 has never been implemented. H.R. 2432 rightly removes the statutory requirement for the Comptroller General to issue a report following the end of the three-year pilot project that TIRA established. Such a report could only, by necessity, announce that the pilot project had failed because the Act was never used – primarily because the funds were never given to GAO to hire the personnel that it would need.

The GAO review function has another advantage in that if OIRA is tempted to not do its job – which has happened under Administrations of both parties – then the threat of embarrassment from the GAO report will provide a useful counterweight to whatever political pressure is being brought on OIRA. If for no other reason than this, then, H.R. 2432 should provide that the GAO establish a separate office with dedicated staff and then ensure that that office is funded at the same amount as OIRA.

Section 6: Improved Regulatory Accounting

In 1996, Congress first ordered OIRA to make a report on the costs and benefits of federal regulatory programs, both in the aggregate and by agency program. At first, Congress made this a directive in year-by-year appropriations bills, but since 2000 this has been a permanent function of OIRA. The report is somewhat useful in allowing comparisons between agencies, which should be helpful to Congress and the

Administration in designating where regulatory dollars should go in order to provide for the most benefit.

There have been recurring problems, however, that OIRA has been unable to overcome. Specifically, OIRA relies on the agencies to supply the raw data that form the basis of the report. Unfortunately, and all too often, the agencies do not present OIRA with estimates that are as reliable as they could be and with a very broad range – particularly for the benefits of regulation. As the NAM has noted on the several occasions that it has commented on the OMB draft report, OIRA needs to come up with a mechanism whereby agencies will supply their data in a common format – and OIRA needs to enforce this requirement with the agency heads and/or department secretaries.

Another recurring problem, as Drs. Crain and Hopkins note in their report for the SBA, is that it is more difficult to estimate the benefits of regulation than the costs. As the lead agency for the process of promulgating regulations, OMB should work with academics in regulatory analysis to establish a statistically sound methodology so that agencies will have better guidance in estimating the benefits of regulation. This would make the annual report more useful and meaningful.

H.R. 2432 provides for a seven-year accounting for regulations, coinciding with reporting requirements for the federal budget: for the previous fiscal year; for the current fiscal year; for the year that the statement is issued; and for the next four fiscal years. As it takes several years for the costs and benefits of a regulation to be felt, this should help both in giving a truer picture of the costs and benefits of a regulation as well as comparison (at least for major rules) of how well the estimates for the costs and benefits of a regulation hold up. Including the regulatory accounting report in the federal budget

would also help to underscore the link between on-budget costs and off-budget costs in the form of regulatory compliance.

Finally, the NAM supports the pilot program for regulatory budgeting. Both Congress and the Administration should try to direct regulatory dollars where they supply the most benefit and at the least cost. This pilot program will help determine whether a regulatory budgeting program for the federal government as a whole makes sense. The NAM agrees with the agencies included in the text of H.R. 2432 for the pilot project since the Department of Labor, the Department of Transportation and the Environmental Protection Agency are the three top sources of rulemaking. The NAM suggests that H.R. 2432 also mandate that at least one independent agency (although the NAM does not take a position as to which it should be) be included in the pilot project. Independent agencies are subject to the Administrative Procedures Act and the Paperwork Reduction Act, although they are not subject to various Executive Orders concerning regulations. Some independent agencies also contribute greatly to the regulatory burden, so a clarification that they at least are subject to section 6(d) if so chosen by the Director of OMB may help in case the agency affected objects to being included.

Conclusion

The primary goal of a regulatory program should be voluntary compliance. This goal is more easily reached when affected entities believe that the system is fair, that the regulation makes sense and is cost-effective and that the ease of compliance is considered while the regulation is being promulgated. By providing OIRA with much-needed additional staff, removing the exemption for the programs under the 2002 farm bill,

providing for GAO review of regulations, improving the annual OMB report on the costs and benefits of federal regulatory programs and creating a pilot project for regulatory budgeting, H.R. 2432 should assist in improving voluntary compliance with federal regulations.

Thank you, Mr. Chairman and members of the Committee for the opportunity to appear before you today.